



09-06-07

1772

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Edlein et al
Serial No.: 09/657,679
Filing Date: September 8, 2000
Title: PRINTED ANTIFOG FILM

Group Art Unit: 1772
Examiner: M. Miggins
Docket No.: D-43378-01

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR §1.181 FROM PREMATURE FINAL REJECTION

Applicant petitions under 37 CFR §1.181 for withdrawal of the premature final rejection of the above-identified application.

The Office Action mailed August 10, 2007 was made final. Applicant requested reconsideration and withdrawal of the finality of that Office Action during a telephone conference with Examiner Miggins on August 30, 2007 discussing the information presented below. However, that conference did not result in withdrawal of finality of the Office action.

For an Office Action containing a new ground of rejection to be made final on the second or subsequent Office actions, the new ground of rejection must be either: 1) necessitated by applicant's amendment of the claims or 2) based on information submitted in an information disclosure statement under 37 C.F.R. §1.97(c). (MPEP §706.07(a).)

In the present case, the new grounds of rejection are set forth on page 4 of the Office action. These new grounds are directed to the sufficiency of the evidence of non-obviousness, specifically that:

- 1) Applicants failed to provide an allegation of unexpected results in declaration or affidavit form;
- 2) Applicants did not compare the invention with the closest prior art Patrick, Elms, and Fairbanks; and
- 3) the alleged unexpected results are not commensurate in scope with claims 1-26.

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These new grounds of rejections were not necessitated by an amendment of the claims. In fact, claims 1-73 and 75-106 were not amended in the most recent Response. Further, these new grounds of rejection were not based on information submitted in an information disclosure statement under 37 C.F.R. 1.97(c). Therefore, the final rejection is premature.

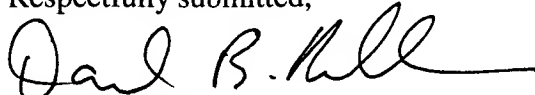
In fact, Applicants have asserted the *same* objective evidence to establish non-obviousness *seven* times in responses over five years of prosecution. (Response mailed May 7, 2007 at page 21; Response mailed September 18, 2006 at page 4; Pre-Appeal Brief Request for Review mailed July 13, 2005 at page 2; Response mailed December 8, 2004 at page 18; Response mailed May 3, 2004 at page 18; Response mailed February 17, 2003 at page 4; and Response mailed July 29, 2002 at page 2.) Thus, the Office has had ample opportunity to raise the issue of sufficiency of the evidence of non-obviousness.

Yet the Examiner *first* raises the issue of sufficiency of the evidence only in the most recent Office action – *and makes the action final*. By so doing, the issue of sufficiency of the evidence of non-obviousness is raised without a fair opportunity for Applicants to respond to the Examiner on this issue, or to file the additional evidence requested, without incurring the significant expense of a continuation application or RCE.

Accordingly, Applicant respectfully requests withdrawal of the finality of the Office Action mailed August 10, 2007.

Please charge the \$130 petition fee believed due under 37 CFR §1.17(h), or the appropriate petition fee, to Deposit Account no. 07-1765. Additionally, the undersigned authorizes the Patent Office to charge any additional fees which are or become due and credit any overpayments made to that same account.

Respectfully submitted,



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Date: September 4, 2007